

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK & CO., INC.,)	
)	
Plaintiff and Counterclaim Defendant,)	
)	
v.)	C.A. No. 07-229 (GMS)
)	
RANBAXY INC., and RANBAXY)	
LABORATORIES LIMITED,)	
)	
Defendants and Counterclaim Plaintiffs.)	

**MERCK'S MOTION FOR AN EXTENSION OF TIME
TO FILE ITS REPLY BRIEF IN SUPPORT OF ITS MOTION
FOR LEAVE TO FILE ITS FIRST SUPPLEMENTAL COMPLAINT**

Plaintiff Merck & Co., Inc. ("Merck") requests a one-week extension of time to file its reply brief in support of its Motion For Leave To File Its First Supplemental Complaint (D.I. 48). The reason for the request is that Merck needs the additional time to prepare its reply, particularly given that much of the period of working on the reply brief overlaps with the Markman proceeding and preparing for that proceeding. The request will not change other dates in the scheduling order and there will be no prejudice to Ranbaxy.

Discovery is ongoing. Under the scheduling order (D.I. 21), fact and expert discovery end May 30, 2008. Trial is scheduled for the week beginning September 15, 2008.

On January 11, 2008, Merck brought its Motion for Leave to File its First Supplemental Complaint. Merck seeks to supplement the Complaint to add four counts for declaratory judgment relating to events that occurred after the filing of the Complaint, including Ranbaxy's filing of two new ANDAs relating to the cilastatin compound covered by claims of the patent-in-suit, U.S. Patent No. 5,147,868 ("868 patent"), and the issuance of a Certificate of Correction for the '868 patent. Ranbaxy filed its Answering Brief (D.I. 51) on January 31, 2008, and Merck's Reply Brief is therefore due on Monday, February 11, 2008.

Merck requests a short extension on the deadline for its Reply Brief, which would move the deadline from February 11 to February 18.¹ Merck seeks additional time because it is currently preparing its presentation for the *Markman* hearing, which will be held on February 7. In addition, Ranbaxy's Answering Brief is 36 pages long and makes numerous assertions that are without merit and which require a response. Moreover, an extension of only a week will not affect any of the other dates on the Court's schedule for this case and will not prejudice Ranbaxy.

On January 26, Merck asked Ranbaxy to agree to a courtesy extension of the deadline for filing its reply brief until February 18. On January 30, 2008, Ranbaxy informed Merck that it would not agree to an extension. Merck followed up by proposing an extension of only four days, until February 15, but Ranbaxy rejected Merck's second request for a proposal as well.²

¹ There has not been a previous extension of Merck's Reply Brief. The parties previously stipulated to a one week extension of the motions themselves, which the Court granted.

² Merck notes that it accommodated Ranbaxy's request for an extension for filing its opening claim construction brief despite the fact that Ranbaxy requested the extension the day before briefing was due and even though the extension reduced Merck's time to prepare its answering brief on claim construction.

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Dated: February 5, 2008
1445286

/s/ James W. Parrett, Jr.

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Attorneys for Merck & Co., Inc.

RULE 7.1.1 CERTIFICATION

I hereby certify that counsel for Merck has raised the subject of the foregoing motion with counsel for Ranbaxy, and that the parties have not been able to reach agreement on the issues raised in the motion.

/s/ James W. Parrett, Jr.

James W. Parrett, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2008, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to the following:

Frederick L. Cottrell , III, Esquire
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Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on February 5, 2008 upon the following individuals in the manner indicated:

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